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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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)
Amendment of Sections 90.631(g))
and (h) of the Commission's Rules)
and Regulations Concerning Wide)
Area Specialized Mobile Radio)
and Business Radio Systems)

RM-8029

To: The Commission

REPLY COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER") by its attorneys, respectfully submits, pursuant to Section 1.405(b) of the Commission's Rules, 47 C.F.R. §1.401(b), its Reply Comments in response to the Comments filed concerning the Petition for Rule Making filed by NABER. NABER has requested that the Commission amend Sections 90.631(g) and (h) of the Commission's Rules to provide for the licensing of wide-area private land mobile radio systems by Business Radio eligible entities and Specialized Mobile Radio Systems.

I. BACKGROUND

The Utilities Telecommunications Council ("UTC") opposes NABER's Petition because it believes that "NABER has not explained how the authorization of wide-area SMR systems would improve spectrum efficiency."¹ UTC states that the proposal would lead to

¹UTC Comments at 4.

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ENCLOSURE

less efficient use of spectrum² and would lead to a nationwide wide area system "... premised on nothing more than 're-use' of frequencies and loading of 70 mobiles per channel over the entire system."³

Initially, UTC fails to recognize or even mention the potential value of NABER's proposal to non-SMR business licensees. While UTC's members enjoy wide-area primary status for its systems, petroleum companies⁴ or other business' with wide-area needs (such as Federal Express or the United Parcel Service) are not afforded primary status for their wide-area stations.

Contrary to UTC's claims, NABER did discuss in its Petition how spectrum efficiency would be improved. Specifically, NABER noted that an SMR or business entity which required two transmitter sites sixty (60) miles apart would need to license different sets of frequencies at each site.⁵ Thus, under the current rules, ten (10) discrete frequencies could be used by a licensee from the SMR Pool (or other pools for business eligibles). Under NABER's proposal, only five (5) discrete frequencies would be utilized from

²UTC Comments at 3.

³UTC Comments at 5.

⁴See, Comments of the American Petroleum Institute ("API").

⁵Fleet Call, Inc. states in its Comments at footnote 6 that "... SMR licensees are free to obtain multiple primary sites for the same frequencies through consensual short spacing of their existing channel assignments." If such consensual short spacing were possible, there would not be a need for NABER's proposed relief. However, as stated in NABER's Petition at page 2, an SMR licensee is prohibited from short-spacing its own frequencies unless the initial frequencies are fully loaded.

the SMR Pool. Therefore, under NABER's proposal more frequencies could remain available to SMR eligibles, reducing the need for intercategory sharing.⁶

An additional benefit from NABER's proposal is a reduction in the potential for co-channel interference. In the major urban areas, Section 90.631 has resulted in an SMR licensee being the licensee of channels 1-5 at Site A, and channels 6-10 at Site B, sixty (60) miles away. The licensee's competitor has become the licensee of channels 6-10 at Site A, and channels 1-5 at Site B, or some myriad of combinations with other competitors. Consequently, all of the licensees must undergo testing and negotiation with competitors (which may not always be cooperative and have differing needs for coverage) to utilize effectively their respective channels. From the standpoint of system compatibility, it is far easier for licensees to "short-space themselves". In such an event, the licensee can engineer each system with consideration only to its own needs, rather than the needs and system designs of numerous competitors. Thus, NABER's proposal may have the net effect of mitigating some interference complaints which arise in a short-spaced environment.

One valid concern has been raised in the Comments of Southern California Gas Company, AMTA and UTC. Specifically, through the use of short-spacing of one's own frequencies, a licensee may be able to prevent a takeback of channels for failure to fully load

⁶Thus, contrary to API's Comments at page 6, NABER's proposal would not further deplete available channels in the SMR Pool.

a system.⁷ NABER is sensitive to this concern and believes that the issue can and should be addressed in a rule making proceeding. There are several different means by which this result can be avoided, including, for example, a rule that would specify that a licensee failing to meet loading at one site would be subject to losing that frequency (or frequencies) at every site licensed to the same entity within seventy (70) miles. Further, the speculative concern will be reduced as systems newly licensed after May, 1993 will not be required to meet a loading deadline. The Commission should explore this issue in the Notice of Proposed Rule Making on 800/900 MHz issues which NABER expects that the Commission will issue in response to Petitions for Rule Making filed by NABER and A & B Electronics, Inc.

⁷The Commission does not recover channels if no applicant on the Waiting List can use the recovered frequencies at the applicant's designated site on a fully-spaced (70 mile) basis.

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission adopt a Notice of Proposed Rule Making and amend Section 90.631(g) and (h) of its rules consistent with this Petition.

Respectfully submitted,

**NATIONAL ASSOCIATION FOR BUSINESS
AND EDUCATIONAL RADIO, INC.**

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CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C., hereby certify that I have on this 27th day of August, 1992, sent copies of the foregoing Reply Comments via first class mail, postage prepaid, to the following:

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